

NOT FOR PUBLICATION

JUL 10 2007

HAROLD S. MARENUS, CLERK U.S. BKCY. APP. PANEL OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

Argued and Submitted on June 21, 2007 at Pasadena, California

Filed - July 10, 2007

Appeal from the United States Bankruptcy Court for the Central District of California

Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding

Before: KLEIN, PAPPAS and ALLEY, ** Bankruptcy Judges.

^{*}This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

 $^{^{\}star\star} \text{Hon.}$ Frank R. Alley, U.S. Bankruptcy Judge for the District of Oregon, sitting by designation.

The debtor, Stephen Law, appeals from a order granting summary judgment in favor of appellee, Cau-Min Li. We AFFIRM.

FACTS

Appellee obtained a judicially confirmed arbitration award against the debtor from the Los Angeles Superior Court on October 14, 1999 (Case no. KC025668) ("1999 State Court Judgment"). The judicially confirmed award provided that the debtor pay \$35,000 to appellee within six months of the award. If the award remained unpaid after six months, then the debtor would be liable to appellee for \$131,821.74. The debtor did not appeal the judgment and did not make any payments to appellee within six months of the award.

On January 5, 2004, the debtor filed a chapter 7 bankruptcy case in the United States Bankruptcy Court, Central District of California. The court clerk's office sent a "Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors" to the debtor and his creditors that set the first meeting of creditors for February 11, 2004, and set the deadline to determine dischargeability of certain debts for April 12, 2004.

On September 30, 2004, appellee filed a timely proof of claim to recover monies owed to him pursuant to the 1999 State Court Judgment. The debtor objected to the proof of claim.

Appellee opposed the debtor's objection.

A hearing was held on March 9, 2005. The court overruled the debtor's objection to claim and allowed appellee's claim in the amount of \$188,330.05. The debtor did not appeal the court's ruling.

Debtor's discharge was denied by the bankruptcy court on September 27, 2005. Debtor appealed, and we affirmed the denial of discharge on December 29, 2006. <u>Law v. Siegel (In re Law)</u>, BAP No. CC-05-1352. The debtor appealed our decision to the Ninth Circuit, which appeal is currently pending (Case No. 07-55194).

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On March 15, 2006, the debtor filed a complaint against appellee to determine the discharge status of his debt to appellee and to object again to appellee's proof of claim.

On June 6, 2006, appellee filed a motion for summary judgment arguing that the debtor's complaint was barred by the doctrines of claim and issue preclusion, and also time barred by Federal Rule of Bankruptcy Procedure 4007(c). The debtor opposed.

A hearing took place on August 9, 2006. The court granted summary judgment in favor of appellee finding that it had previously determined the validity of appellee's proof of claim in March 2005, and therefore the debtor's objection was barred by claim and issue preclusion. The court also ruled that because the deadline to file a complaint to determine dischargeability of debt expired on April 12, 2004, the debtor's complaint filed on March 15, 2006, was not timely and thus barred by Rule 4007(c).

On August 30, 2006, the debtor filed a motion for reconsideration. The court denied the debtor's motion on October 17, 2006, because the debtor provided no analysis pursuant to Federal Rules of Civil Procedure 59 and 60, and because the debtor's motion provided no argument or evidence which the court had not previously considered.

This timely appeal ensued.

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JURISDICTION

The bankruptcy court had jurisdiction via 28 U.S.C. § 1334. We have jurisdiction under 28 U.S.C. § 158(a)(1).

ISSUE

Whether the bankruptcy court erred when it granted summary judgment in favor of appellee, and subsequently denied reconsideration.

STANDARD OF REVIEW

We review summary judgment de novo to assess whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. Khaligh v. Hadaegh (In re Khaligh), 338 B.R. 817, 823 (9th Cir. BAP 2006). review the bankruptcy court's denial of a motion for reconsideration for an abuse of discretion. Smith v. Pac. Props. & Dev. Corp., 358 F.3d 1097, 1100 (9th Cir. 2004).

DISCUSSION

On March 15, 2006, the debtor filed a complaint seeking a determination that the debt resulting from the 1999 State Court Judgment entered on October 14, 1999, was discharged.

Appellee argues that the complaint was to determine dischargeability of a debt under 11 U.S.C. § 523(c) and under Rule 4007(c), it must be filed no later than sixty days after the first date set for the 11 U.S.C. § 341 meeting of creditors, which in this case was April 12, 2004.

The debtor counters that he did not file a complaint to determine the dischargeability of the 1999 State Court Judgment pursuant to \$ 523(c), but rather pursuant to 11 U.S.C.

 \S 524(a)(1). We agree.

Section 524(a)(1) provides:

(a) A discharge in a case under this title -

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727 . . . of this title, whether or not discharge of such debt is waived.

We construe the debtor's complaint as seeking relief under \$ 524. There is, however, a fatal flaw in the debtor's theory. Because the debtor's discharge was denied, there is no discharge to enforce. Hence, the debtor's theory is not viable as a matter of law.

The court did not err dismissing the debtor's complaint.

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The debtor's complaint also sought to relitigate appellee's claim that was filed on September 30, 2004, and previously allowed by the court after a contest.

The debtor had previously objected to appellee's proof of claim in February 2005. At a hearing in March 2005, the court considered the evidence, heard arguments of both parties, and overruled the debtor's objection. Appellee's claim was allowed in the amount of \$188,330.05. That order is final.

The debtor cannot now relitigate issues that have already been actually litigated and decided in a matter that was resolved by way of a final judgment. George v. City of Morro Bay (In re George), 318 B.R. 729, 733 (9th Cir. BAP 2004); Frankfort Digital Servs., Ltd. v. Neary (In re Reynoso), 315 B.R. 544, 551 (9th Cir. BAP 2004), aff'd, 477 F.3d 1117 (9th Cir. 2007); The Alary Corp. v. Sims (In re Assoc'd Vintage Group, Inc.), 283 B.R. 549, 555 (9th Cir. BAP 2002). The court did not err in concluding that the res judicata rules of claim and issue preclusion operated to preclude re-litigation of the debtor's claim objection.

Furthermore, the court did not abuse its discretion when it denied the debtor's motion for reconsideration, which presented no new matters for consideration by the court.

CONCLUSION

The bankruptcy court did not err when it granted summary judgment in favor of appellee, and subsequently denied reconsideration. The debtor's discharge had previously been denied, and the court had previously ruled on the debtor's objection to appellee's claim. AFFIRMED.